

1 ROBERT L. GOLDSTEIN (CSBN 184226)
2 CINDY L. HO (CSBN 227226)
3 LAW OFFICES OF ROBERT L. GOLDSTEIN
4 100 BUSH STREET, SUITE 501
5 SAN FRANCISCO, CA 94104
6 Telephone: (415) 391-8710 EXT. 107
7 Facsimile: (415) 391-8701

8 ATTORNEYS FOR JESUS MARQUEZ,
9 OLGA MARQUEZ, RAMON MARQUEZ,
10 JUANITA MARQUEZ,
11 TAQUERIA LOS PRIMOS, and
12 TAQUERIA LOS PRIMOS NO. 2

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

20
21
22
23
24
25
26
27
28

UNITED STATES OF AMERICA,) Case No.: CV 08 0891
Plaintiff,)) DEFENDANTS JESUS MARQUEZ,
vs.)) OLGA MARQUEZ, RAMON MARQUEZ,
JESUS MARQUEZ, OLGA MARQUEZ,)) JUANITA MARQUEZ,
RAMON MARQUEZ, JUANITA MARQUEZ,)) TAQUERIA LOS PRIMOS, AND
TAQUERIA LOS PRIMOS, and)) TAQUERIA LOS PRIMOS NO. 2'S
TAQUERIA LOS PRIMOS NO. 2,)) ANSWER
Defendants))

COMES NOW the Defendants, Jesus Marquez, Olga Marquez,
Ramon Marquez, Juanita Marquez, Taqueria Los Primos, and
Taqueria Los Primos No. 2, deny any and all such allegations,
and further admit or deny the specific allegations of the
Complaint and states affirmative defenses, as follows:

1 **COUNT I**

2 **JURISDICTION AND VENUE**

3 1. Defendants admit the allegations of the nature of the
4 case in paragraph 1.

5 2. Defendants admit the allegations of subject
6 matter jurisdiction in paragraph 2.

7 3. Defendants admit the allegations of personal
8 jurisdiction of paragraph 3.

9 4. Defendants admit the allegations of venue of paragraph
10
11 4.

12 **COUNT II**

13 **IDENTIFICATION OF DEFENDANTS**

14 5. Defendants, Jesus and Olga Marquez, admit that they
15 reside in this District, as alleged in paragraph 5.

16 6. Defendants, Ramon and Juanita Marquez, admit that they
17 reside in this District, as alleged in paragraph 6.

18 7. Defendant Taqueria Los Primos, a partnership, admits
19 that it resides in this District, as alleged in paragraph 7.

20 8. Defendant Taqueria Los Primos No. 2, a partnership,
21 admits that it resides in this District, as alleged in paragraph
22
23 8.

24 9. Defendants admit that the real property subject of
25 this foreclosure is located in this District, as alleged in
26
27
28

1 paragraph 9.

2 10. Answering paragraph 10 of the Complaint, Defendants
3 lack information sufficient to form a belief as to the facts
4 alleged, and on that basis, Defendants deny them.

5 11. Defendants lack information sufficient to deny or
6 admit the allegation where Defendant Bank of America is
7 authorized to do business and its designated agent for service
8 of process, as alleged in paragraph 11. Defendants admit that
9 Defendant Bank of America may claim an interest in property
10 described in paragraph 11.

11 12. Answering paragraph 12 of the Complaint, Defendants
13 lack information sufficient to form a belief as to the facts
14 alleged, and on that basis, Defendants deny them.

15 13. Answering paragraph 13 of the Complaint, Defendants
16 lack information sufficient to form a belief as to the facts
17 alleged, and on that basis, Defendants deny them.

18 14. Answering paragraph 14 of the Complaint, Defendants
19 lack information sufficient to form a belief as to the facts
20 alleged, and on that basis, Defendants deny them.

21 15. Answering paragraph 15 of the Complaint, Defendants
22 lack information sufficient to form a belief as to the facts
23 alleged, and on that basis, Defendants deny them.

24 16. Answering paragraph 16 of the Complaint, Defendants
25

1 lack information sufficient to form a belief as to the facts
2 alleged, and on that basis, Defendants deny them.

3 **COUNT III**

4 **RESPONSE REDUCE TO JUDGMENT ASSESSMENTS AGAINST JESUS AND OLGA**
5 **MARQUEZ**

6 17. Paragraphs 1 - 16 are incorporated by reference.
7
8 18. Defendants admit the allegations in paragraph 18.
9
10 19. Defendants are without sufficient information to admit
11 or deny the allegations of timely notice and demand for payment
12 of the assessments described in paragraph 18, and therefore deny
13 them. Defendants further deny the allegation that Defendants
14 have "neglected, failed, or refused to pay the assessments"
15 described in paragraph 18. To the extent that the statements in
16 paragraph 19 refer to any allegations of improper, or otherwise
17 wrongful conduct on the part of Jesus and Olga Marquez, the
18 allegations are denied.

19
20 **COUNT IV**

21 **RESPONSE REDUCE TO JUDGMENT ASSESSMENTS AGAINST RAMON AND**
22 **JUANITA MARQUEZ**

23 20. Paragraphs 1 - 19 are incorporated by reference.
24
25 21. Defendants admit the allegations in paragraph 21.
26
27 22. Defendants are without sufficient information to admit
28 or deny the allegations of timely notice and demand for payment
of the assessments described in paragraph 21, and therefore deny

1 them. Defendants further deny the allegation that Defendants
2 have "neglected, failed, or refused to pay the assessments"
3 described in paragraph 21. To the extent that the statements in
4 paragraph 22 refer to any allegations of improper, or otherwise
5 wrongful conduct on the part of Ramon and Juanita Marquez, the
6 allegations are denied.
7

8 **COUNT V**

9 **RESPONSE REDUCE TO JUDGMENT ASSESSMENTS AGAINST TAQUERIA LOS**
10 **PRIMOS**

11 23. Paragraphs 1 - 22 are incorporated by reference.
12 24. Defendant admits the allegations in paragraph 24.
13 25. Defendant Taqueria Los Primos, a partnership, and its
14 partners, Jesus Marquez and Ramon Marquez , are without
15 sufficient information to admit or deny the allegations of
16 timely notice and demand for payment of the assessments
17 described in paragraph 24, and therefore deny them. Defendants
18 further deny the allegation that Defendants have "neglected,
19 failed, or refused to pay the assessments" described in
20 paragraph 24. To the extent that the statements in paragraph 25
21 refer to any allegations of improper, or otherwise wrongful
22 conduct on the part of Taqueria Los Primos, the allegations are
23 denied.
24
25
26

27 //
28

1
COUNT VI

2
RESPONSE REDUCE TO JUDGMENT ASSESSMENTS AGAINST TAQUERIA LOS
PRIMOS NO. 2

3
26. Paragraphs 1 - 25 are incorporated by reference.
4
27. Defendant admits the allegations in paragraph 27.
5
28. Defendant Taqueria Los Primos No. 2, a partnership,
6 and its partners, Jesus Marquez and Ramon Marquez, are without
7 sufficient information to admit or deny the allegations of
8 timely notice and demand for payment of the assessments
9 described in paragraph 27, and therefore deny them. Defendants
10 further deny the allegation that Defendants have "neglected,
11 failed, or refused to pay the assessments" described in
12 paragraph 27. To the extent that the statements in paragraph 28
13 refer to any allegations of improper, or otherwise wrongful
14 conduct on the part of Taqueria Los Primos No. 2, the
15 allegations are denied.
16
17
18

19
COUNT VII

20
RESPONSE FORECLOSURE FEDERAL TAX LIENS

21
22. Paragraphs 1 - 28 are incorporated by reference.
23
24. Defendants, Jesus and Olga Marquez, admit allegations
25 in paragraph 30. However, Defendants deny allegations to the
26 extent that the statements in paragraph 30 refer to any
27 allegations of neglect or refusal to pay the assessments
28 described in paragraph 18.

1 31. Defendants, Jesus and Olga Marquez, generally believe
2 the assertions of paragraphs 18 and 31 to be true, and reserve
3 the right to admit or deny any related assertions which might
4 subsequently be asserted by the government.

5 32. Defendants, Ramon and Juanita Marquez, admit
6 allegations in paragraph 32. However, Defendants deny
7 allegations to the extent that the statements in paragraph 32
8 refer to any allegations of neglect or refusal to pay the
9 assessments described in paragraph 21.

11 33. Defendants, Ramon and Juanita Marquez, generally
12 believe the assertions of paragraphs 21 and 33 to be true, and
13 reserve the right to admit or deny any related assertions which
14 might subsequently be asserted by the government.

16 34. Defendant Taqueria Los Primos, a partnership, and its
17 partners, Jesus Marques and Ramon Marquez, admit allegations in
18 paragraph 34. However, Defendant denies allegations to the
19 extent that the statements in paragraph 34 refer to any
20 allegations of neglect or refusal to pay the assessments
21 described in paragraph 24.

23 35. Defendant Taqueria Los Primos, a partnership, and its
24 partners, Jesus Marquez and Ramon Marquez, generally believe the
25 assertions of paragraphs 24 and 35 to be true, and reserve the
26 right to admit or deny any related assertions which might
27 subsequently be asserted by the government.

36. Defendant Taqueria Los Primos No. 2, a partnership, and its partners, Jesus Marques and Ramon Marquez, admit allegations in paragraph 36. However, Defendant denies allegations to the extent that the statements in paragraph 36 refer to any allegations of neglect or refusal to pay the assessments described in paragraph 27.

37. Defendant Taqueria Los Primos No. 2, a partnership, and its partners, Jesus Marquez and Ramon Marquez, generally believe the assertions of paragraphs 27 and 37 to be true, and reserve the right to admit or deny any related assertions which might subsequently be asserted by the government.

38. Defendants admit the allegations in paragraph 38.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

SEIZURE IS NOT A REASONABLE ALTERNATIVE FOR COLLECTION BECAUSE
EQUITY IN THE PROPERTY IS INSUFFICIENT TO SATISFY THE LIABILITY

39. Pursuant to 26, United States Code, Sections 6331(j), prior to seizure, Plaintiff must implement a thorough investigation establishing that there is sufficient equity from the sale real property described in paragraph 9 of the Complaint to satisfy the tax liability.

40. Defendants believe that the fair market value of the residence described in paragraph 9 of the Complaint has significantly declined since the last professional appraisal

1 performed on April, 14 2005. Accordingly the equity in this
2 residence, in a sale, is believed to be insufficient to satisfy
3 assessments described in paragraphs 18, 21, 24, and 27 of the
4 Complaint.

5
6 SECOND AFFIRMATIVE DEFENSE

7 REASONABLE ALTERNATIVES FOR COLLECTION EXISTS

8 41. Pursuant to Treasury Regulations, Subchapter F,
9 Section 301.6334-1(d)(1), Plaintiff must establish that there
10 are no other reasonable alternatives for collection of the tax
11 liabilities.

12 42. Defendants allege that a reasonable alternative for
13 collection is to allow the Defendants to pursue a home loan or
14 refinance. If successful, Defendants would forward all loan
15 proceeds to Plaintiff which would substantially reduce the
16 assessments described in paragraphs 18, 21, 24, and 27 of the
17 Complaint.

18 43. Further, seizure of the home residence is against
19 public policy in light of the reasonable alternative to
20 collection stated above in paragraph 42. Especially, when
21 considering that Defendants, Jesus and Olga Marquez and Ramon
22 and Juanita Marquez, including their four children would be
23 homeless if seizure of the real property was granted.

24
25
26
27
28 //

1 WHEREFORE, Defendants pray this Honorable Court for the
2 following relief:

3 1. For a finding that Plaintiff has failed to fully
4 investigate and establish that foreclosure of real property
5 described in paragraph 9 of the Complaint would sufficiently
6 satisfy Defendants' unpaid federal liabilities;

7 2. For a finding that Plaintiff has failed to show that
8 there are no other reasonable alternatives to collection of
9 Defendants' unpaid federal liabilities;

10 3. For dismissal of the Plaintiff's action with
11 prejudice; and

12 4. For such further and other relief and the Court deems
13 fair and just.

14 Dated this 11th day of March, 2008

15 /S/ CINDY L. HO

16 CINDY L. HO
(CSBN 227226)
ROBERT L. GOLDSTEIN
(CSBN 184226)

17 THE LAW OFFICES OF ROBERT L. GOLDSTEIN
18 100 BUSH STREET, SUITE 501
19 SAN FRANCISCO, CA 94104

VERIFICATION

I, Cindy L. Ho, am an attorney for the Defendant in the above-entitled action. I have read the foregoing *Answer* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Francisco, California.

Dated this 11th day of March, 2008

/S/ CINDY L. HO

CINDY L. HO
(CSBN 227226)
ROBERT L. GOLDSTEIN
(CSBN 184226)

THE LAW OFFICES OF ROBERT L. GOLDSTEIN
100 BUSH STREET, SUITE 501
SAN FRANCISCO, CA 94104